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February 28, 2025

## VIA ECF AND ELECTRONIC MAIL

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The Honorable Katherine Polk Failla U.S. District Court for the Southern District of New York Thurgood Marshall United States Courthouse 40 Foley Square New York, NY 10007

Re: Petróleos de Venezuela v. MUFG Union Bank, N.A., No. 1:19-cv-10023-KPF (S.D.N.Y.)

Dear Judge Failla:

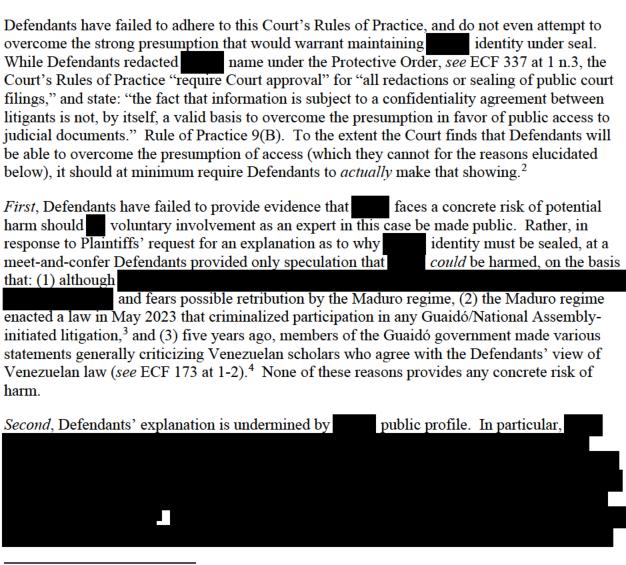
Plaintiffs Petróleos de Venezuela, S.A., PDVSA Petróleo, S.A., and PDV Holding, Inc. (together, "Plaintiffs") respectfully request that the Court review the expert-identity redactions made by Defendants MUFG Union Bank, N.A. and GLAS Americas LLC (together "Defendants") in their opening supplemental brief and the report of their new Venezuelan law expert. Defendants redacted (or replaced with a pseudonym "Roe") the name and all identifying information of their new expert, , which they had designated as "Attorneys' Eyes Only" under the Protective Order. Defendants have not demonstrated why these redactions are justified, as required by Rule 9(B) & (C) of the Court's Individual Rules of Practice in Civil Cases ("Rules of Practice"), and as discussed herein, such redactions are unwarranted.

Under applicable law and the Court's rules, there is a "presumption in favor of public access to judicial documents." Rule of Practice 9(B) (citing Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119-20 (2d Cir. 2006)). Further, "a strong presumption attaches to materials filed in connection with dispositive motions, such as ... a summary judgment motion." Olson v. Major League Baseball, 29 F.4th 59, 90 (2d Cir. 2022). This "strong presumption" extends to the documents that "hav[e] been submitted to the court as supporting material in connection with a motion for summary judgment." Lugosch, 435 F.3d at 123. To overcome this presumption, a court must make "specific, on the record findings ... that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* at 120 (quotation marks and citation omitted); Brown v. Maxwell, 929 F.3d 41, 48 (2d Cir. 2019) (same).

<sup>1</sup> Defendants redacted name in declaration, see ECF 348 (redacted version of ECF 336), filed curriculum vitae under seal (ECF 336-1, 348-1), and replaced name with a pseudonym "Roe" in their supplemental brief, see ECF 337 (sealed version), 347 (public version). Plaintiffs do not object to the other redactions made in Defendants' supplemental brief.

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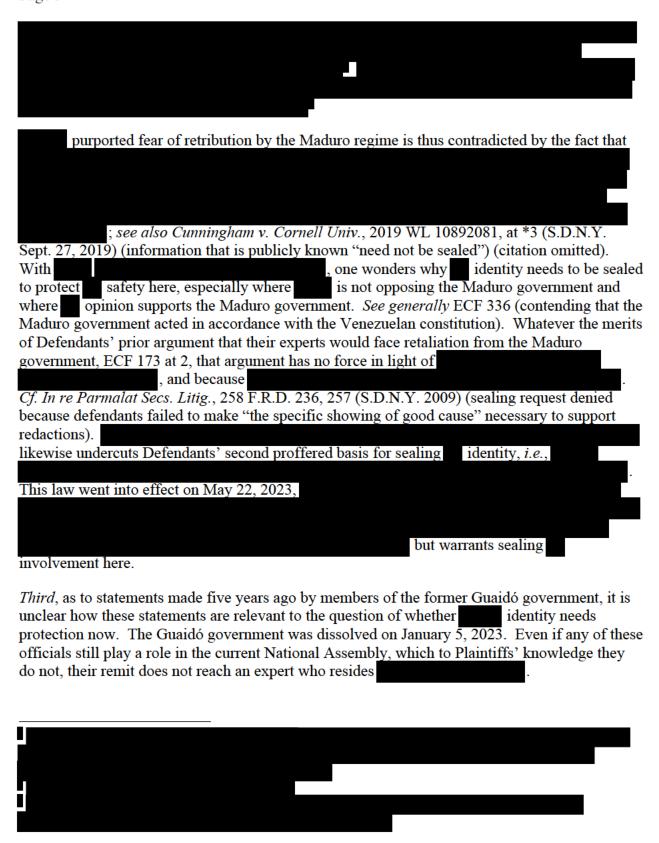


<sup>&</sup>lt;sup>2</sup> Nearly five years ago, the Court determined that the identity of Defendants' former expert warranted protection. ECF 207. While Plaintiffs are not contesting this ruling, it pertained only to Defendants' former expert, and was based on "sufficient evidence of potential harm" presented at the time. *Id.* at 1. The Court's order did not prospectively provide for blanket sealing of *any* Venezuelan law expert engaged by Defendants.

<sup>&</sup>lt;sup>3</sup> A translation of the law in question, Law for the Protection of Assets, Rights, and Interests of the Republic and its Entities Abroad, Official Gazette No. 6,747 (May 22, 2023), is available at ECF 319-2. 
<sup>4</sup> During the meet-and-confer, Defendants offered to consider whether their new expert's identity may be disclosed to select personnel on Plaintiffs' side, if Plaintiffs agree not to challenge the "Attorneys' Eyes Only" designation, subject to Plaintiffs providing a list of such personnel for Defendants' review and approval. Plaintiffs believe re-designation of identity to "Confidential" (the same designation as that of Defendants' former expert) is more consistent with the Protective Order's intent; but in any event, Defendants' offer does not resolve the public-access presumption.

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The real reason for Defendants' desire to	keep secret the identity of their new Venezuelan law
expert appears to be to insulate from	n either public criticism of views on Venezuelan law
	. Neither one is, of
course, a valid reason for sealing.	voluntarily agreed to serve as Defendants' expert in this
case, is compensated at the hourly rate o	$\mathbf{f}$
and is not free to serve as a shadow expert immune from public scrutiny and able to shield	
because of possible concerns abo	out professional credibility or public perception of
involvement.9	

Plaintiffs therefore respectfully request that the Court conclude that Defendants have not overcome the strong presumption in favor of public access with respect to their expert's identity. In the alternative, Plaintiffs request that this Court instruct Defendants to file a submission making such a showing, as is required by the Court's Rules of Practice, and request the opportunity to reply to any such application by Defendants.

Respectfully submitted,

# /s/ Michael J. Gottlieb

Michael J. Gottlieb

Counsel for Plaintiff-Counterdefendant PDV Holding, Inc.

#### /s/ Kurt W. Hansson

Kurt W. Hansson

Igor V. Timofeyev (application for admission forthcoming)

Counsel for Plaintiffs-Counterdefendants Petróleos De Venezuela, S.A. and PDVSA Petróleo, S.A.

cc: Counsel of record

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